



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **ET, FFL**

Introduction

This expedited hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for early termination of a tenancy pursuant to section 56;
- Authorization to recover the filing fee for this application pursuant to section 72.

The landlord attended the hearing and had the opportunity to call witnesses and present affirmed testimony and written evidence. The hearing process was explained, and an opportunity was given to ask questions about the hearing process.

The tenants did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 20 minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenants was provided.

The landlord testified the landlord served the Notice of Hearing and Application for Dispute Resolution by posting on the tenants' door on August 4, 2020, thereby effecting service 3 days later, on August 7, 2020. I find the landlord served the tenants pursuant to the Act as the landlord testified

Issue(s) to be Decided

Is the landlord entitled to the following

- An order for early termination of a tenancy pursuant to section 56;
- Authorization to recover the filing fee for this application pursuant to section 72.

Background and Evidence

The landlord provided uncontradicted testimony as the tenants did not attend the hearing.

The tenancy began on Jul 19, 2019. Rent is \$1,500.00 monthly payable on the first of the month. At the beginning of the tenancy, the tenants provided a security deposit of \$750.00 which the landlord holds. The landlord submitted a copy of the tenancy agreement as evidence.

The unit is a basement suite in the landlord's residence. The landlord testified that he believed from personal observation and from neighbours' complaints that there is ongoing criminal activity involving drugs and other illegal behaviour. The landlord stated that the police have been to the unit many times because the tenants are suspected of drug dealing. The landlord provided several police files numbers. The landlord further testified that people are coming and going to the unit at all hours of the day and night. The landlord submitted photographs of mounds of garbage and debris; he testified there was considerable ongoing unassessed damage to the unit.

The landlord testified that he posted a One Month Notice to End Tenancy for Cause on July 2, 2020 which the tenants removed. The hearing an Order of Possession and for a monetary award for several months of outstanding rent is scheduled for August 11, 2020, the file number being referenced on the first page.

After service of the One Month Notice, the tenants took some of their possessions and vacated the unit. However, they have told the landlord they "still live there" and refuse to return the keys. The problems described above have continued and the landlord is afraid of the consequences to the property of the tenants' disturbing and illegal behaviour.

The landlord requested an Order of Possession and claimed the tenants posed an immediate and severe risk to the property.

Analysis

While I have turned my mind to the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. The principal aspects of this matter and my findings are set out below.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In this case, the onus is on the landlord to establish on a balance of probabilities that he is entitled to an order for an early end of the tenancy.

To end a tenancy early, the landlord must prove that the tenant has done something contrary to section 56 **and** that it would be unreasonable or unfair to the landlord or other occupants to wait for a notice to end tenancy for cause ("One Month Notice").

Section 56 of the Act provides as follows [emphasis added]:

Application for order ending tenancy early

Section 56

- (1) A landlord may make an application for dispute resolution to request an order
 - (a) ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 [*landlord's notice: cause*], and
 - (b) granting the landlord an order of possession in respect of the rental unit.
- (2) The director may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession only if satisfied, in the case of a landlord's application,
 - (a) the tenant or a person permitted on the residential property by the tenant has done any of the following:
 - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
 - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
 - (iii) put the landlord's property at significant risk;
 - (iv) engaged in illegal activity that

- (A) has caused or is likely to cause damage to the landlord's property,
- (B) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
- (C) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- (v) caused extraordinary damage to the residential property, and
- (b) it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a notice to end the tenancy under section 47 [*landlord's notice: cause*] to take effect.

(3) If an order is made under this section, it is unnecessary for the landlord to give the tenant a notice to end the tenancy.

The landlord relied on section 56(2)(a)(i), (iv) and (v), that is, that the tenants have *significantly interfered with or unreasonably disturbed another occupant or the landlord, engaged in illegal activity that has caused or is likely to cause damage to the landlord's property, and/or, the tenant has caused extraordinary damage to the unit.*

Policy Guideline 51 – Expedited Hearing provides guidance on the issuance of Orders of Possessions in these circumstances. The Guideline states in part:

Applications to end a tenancy early are for very serious breaches only and require sufficient supporting evidence. An example of a serious breach is a tenant or their guest pepper spraying a landlord or caretaker.

The landlord must provide sufficient evidence to prove the tenant or their guest committed the serious breach, and the director must also be satisfied that it would be unreasonable or unfair to the landlord or other occupants of the property or park to wait for a Notice to End Tenancy for cause to take effect (at least one month).

Based on a review of the testimony and evidence, and taking into account the Act and the Guideline, I find that the landlord has met the burden of proof on a balance of probabilities under section 56(2)(a)(ii) and (v), that is, the tenant *significantly interfered with or unreasonably disturbed another occupant or the landlord, engaged in illegal activity that has caused or is likely to cause damage to the landlord's property, and/or, the tenant has caused extraordinary damage to the unit.*

I also find the landlord has met the burden of proof on a balance of probabilities that it would be unreasonable, or unfair to the landlord to wait for a notice to end the tenancy

under section 47 [landlord's notice: cause] to take effect. I find the damage of the water on the floor of the basement to be causing ongoing damage and the presence of feces from rats or the dog to be a significant health and safety concern.

In reaching this conclusion, I have given significant weight to the testimony and photographs submitted by the landlord. The landlord impressed me as candid, forthright, and credible; his testimony was supported by photographs which illustrated ongoing damage to the unit. I accept his evidence as a reasonable interpretation of events that there is fear of ongoing criminal activities and continued damage to the unit.

I accept the landlord's evidence that the tenants are keeping "one foot in the door" in failing to fully vacate the unit with their possessions, asserting the right to come and go as they wish, and refusing to return the keys.

I find the landlord has established entitlement to an order for early termination of tenancy and an Order of Possession effective immediately.

Accordingly, I grant an Order of Possession ending the tenancy effective two days after service on the tenant.

As the landlord has been successful in this application, the landlord is entitled to reimbursement of the filing fee in the amount of \$100.00 which the landlord may deduct from the security deposit.

Conclusion

I grant the landlord an Order of Possession effective two days after service on the tenants.

This order must be served on the tenants. If the tenants fail to comply with this order, the landlord may file the order with the Supreme Court of British Columbia to be enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 19, 2020